IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10296 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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SENIOR SUPERINTENDENT OF RMS - Petitioner(s)

Versus

BHARTIYA RMS & MMS EMPLOYEES UNIO - Respondent(s)

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Appearance :
MR JITENDRA MALKAN for Petitioner(s) : 1,
MR PH PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/11/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 20th August 2001 passed by the Industrial Tribunal (Central), Surat in Reference (ITC) No.2/91 whereby the Tribunal directed the petitioner to reinstate the workman with full back wages along with costs of Rs.3000/-.

2. The short facts of the case are that the respondent was working with the petitioner on daily wage basis. According to the respondent his services were terminated without following proper procedure and therefore he raised a dispute which was referred to the Industrial Tribunal, Surat, which passed the

aforesaid award.

4. Learned counsel for the petitioner submitted that the Industrial Court ought not to have awarded reinstatement as the respondent was working as daily wager. He further submitted that there was no justification for grant of back wages.

5. Learned counsel for the respondent submitted that the Industrial Court has considered all the aspects of the matter and therefore no interference may be caused in the petition.

6. While admitting the matter this Court had granted interim relief which was continued till further orders. In view of the aforesaid order the respondent workman has already been reinstated. Therefore at this stage it would not be appropriate to disturb the said position after a period of almost four years. Even otherwise, I am in complete agreement with the reasonings adopted and findings arrived at by the Industrial Court. Therefore the only question is about back wages.

7. A perusal of the record shows that the Industrial Court has not given any reasons for awarding back wages. Even otherwise, the law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh,

reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

7. In the premises aforesaid, the petition is partly allowed. The award of the Industrial Court qua back wages is quashed and set aside. The award of the Industrial Court is modified to the aforesaid extent. The respondent workman is entitled to reinstatement with continuity of service from the date of publication of the award. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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